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KAPLAN KIRSCH ROCKWELL

March 26, 2007

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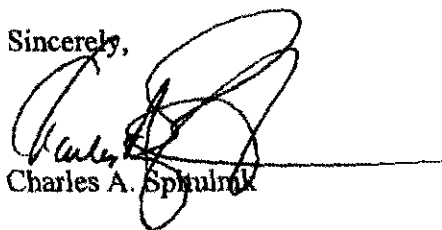
Honorable Vernon A. Williams
Secretary
Surface Transportation Commission
395 E Street, S.W.
Washington, DC 20423-0001

Re: *Savage Bingham & Garfield Railroad Company – Acquisition and Operation
Exemption – Union Pacific Railroad Company. Finance Docket No. 35002*

Dear Sir:

I am enclosing the Reply of Utah Transit Authority to Petition for Stay in the above referenced proceeding.

Sincerely,



Charles A. Spaulnik

Enclosure

123721

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Before the
Surface Transportation Board
Washington, DC

Finance Docket No. 35002

**SAVAGE, BINGHAM & GARFIELD RAILROAD COMPANY --
ACQUISITION AND OPERATION EXEMPTION --
UNION PACIFIC RAILROAD COMPANY**

**REPLY OF
UTAH TRANSIT AUTHORITY
TO PETITION FOR STAY**

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**REPLY OF
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The Utah Transit Authority ("UTA"), by undersigned counsel, hereby replies to the Petition of American Welding & Tank, Frito-Lay, Inc., Mastercraft Cabinets, SME, BMC Lumber, Interstate Brick, and US Navy-Alliant Techsystems (the "Utah Shipper Coalition") for Stay in this proceeding. The Petition for Stay should be denied promptly.

BACKGROUND

On February 28, 2007 the Savage, Bingham & Garfield Railroad Company ("SBG") filed a Notice of Exemption in this proceeding, describing its proposed acquisition and operation of freight easements from the Union Pacific Railroad Company ("UPRR") on (a) UPRR's lines of railroad between milepost 4.66 at Welby and milepost 17.10 at Magna ("Garfield Branch"), and between milepost 0.00 at Kearns and milepost 2.01 at Bacchus ("Bacchus Branch"); (b) the UPRR line of railroad between milepost 0.18 at Midvale and milepost 6.60 at Bagley Spur ("Bingham Industrial Lead"); and (c) various UPRR wye, yard and team tracks in the vicinity of Midvale ("Midvale Trackage"), a total of 20.87 miles, all in Salt Lake County, UT. This Board published that Notice on March 15, 2007. F.D. No. 35002, *Savage, Bingham & Garfield R. Co. - Acquisition and Operation Exemption - Union Pacific R. Co., slip op.*, Service Date March 15,

2007 ("March 15 Notice"). The Board noted that in a separate but related transaction, UPRR will convey the underlying right of way on the Bingham Industrial Lead to UTA, while retaining the freight operating easement that will be transferred to SBG in the transaction described in the Notice. *March 15 Notice, slip op.* at 1. The *March 15 Notice* also stated that "the earliest the transaction may be consummated is March 29, 2007". *Id.* at 2.

Without first confirming the actual proposed closing date of the transaction to confirm that its allegations about failure to timely file the requisite documents was correct, and without inquiring of the UTA about its intent with respect to compliance with applicable law and regulations, the Utah Shipper Coalition has sought a stay of the transaction described in the *March 15 Notice*. Had the Utah Shipper Coalition made that inquiry it would have learned:

- (1) that the proposed closing date has been postponed, in part to permit UTA and the railroads to engage in further discussions with members of that coalition about issues raised in a meeting with them on March 9, 2007;
- (2) that the proposed closing date has been postponed;
- (3) that UTA is well-aware of and has every intention of complying with its obligations under applicable federal law and regulations; and
- (4) that any Petition for Stay would therefore be premature and moot.

Because the request for a stay is based on faulty premises and because the Utah Shipper Coalition therefore does not meet the well-established standards for issuance of a stay by this Board, the request should be denied.

ARGUMENT

THE PETITION FOR STAY SHOULD BE DENIED BECAUSE PETITIONERS CANNOT SATISFY THE BOARD'S CRITERIA FOR ISSUANCE OF A STAY

The Utah Shipper Coalition correctly states the criteria of this Board's cases that weigh requests for a stay, *see* Petition for Stay at 4, but incorrectly concludes that the Petition satisfies those requirements. Because UTA has every intention of fully complying with its obligations under applicable law and regulations, because the date for closing the transaction has been postponed and not yet re-established with certainty, and because there can be no showing of harm to plaintiffs by leaving the effective date of the *March 15 Notice* in place, no stay is warranted at this time.

(1) Petitioners have no likelihood of success on the merits.

The Utah Shipper Coalition's Petition must fail because it rests on the premise that "UTA has failed to file a Notice of Exemption and Motion to Dismiss as to the sale of the track assets of the Bingham Industrial Lead." Petition for Stay at 4. While the statement that UTA has not yet filed such documents is correct, the conclusion that the Utah Shipper Coalition draws from it is not. UTA confirms that it is well aware of applicable statutes and STB rules, having complied with them fully in previous transactions in which UTA has acquired property from the UPRR.¹ Once the date for closing the UTA-UPRR transaction is established, and the terms for UTA's acquisition of the underlying property and of the retention and exercise of the rights under the freight easement by UPRR and/or SBG have been finalized, UTA will comply fully as it has routinely done in the past with all applicable law and regulations. As a result, the Coalition's Petition rests on a false premise, is premature and must be denied.

¹ See, e.g., STB F.D. No. 34170, *Utah Transit Auth. – Acquisition Exemption – Certain Assets of Union Pacific R. Co.*, slip op. (Service Date May 22, 2002).

(2) The members of the Coalition will not be irreparably harmed.

Representatives of UTA, UPRR and SBG have met with members of the Utah Shipper Coalition on March 9, 2007 to discuss questions that have been raised about the implementation of the proposed transaction. The members of the Coalition can not show that they will be harmed by the implementation of the transaction because its terms have not yet been finalized due in part to the continuation of the discussions with them.

(3) The parties to the transactions will be harmed by a stay.

A stay of the effective date is both unnecessary and potentially harmful to the parties to the transaction. It would create a cloud over the transaction, thereby creating uncertainty over the parties' respective rights and obligations, where none is appropriate. Where the parties have acknowledged, as UTA does by this Reply, that the transaction closing date has been postponed and that they intend to fully comply with all statutory and regulatory mandates thus providing all parties with an opportunity to be heard as to the merits of the transaction once its terms have been finalized, there is no need for this Board to issue any order that could create any uncertainty about their ability to close once the terms are finalized.

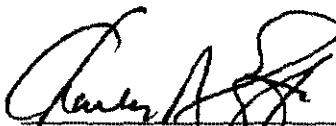
(4) The public interest does not favor granting a stay.

If it were the case, which it is not, that any party was taking any action that conflicted with or violated rights or obligations under applicable law, then the public interest could be invoked to justify issuance of a stay. Here, the public interest would not be served. This Board has been asked to issue an order that is moot, and to enter an alleged fray where none exists. No parties' rights have been or will be violated because UTA will fully comply with its obligations under applicable law. No party has failed to meet any statutory or regulatory obligations – the transaction that is the subject of the Notice of Exemption in this proceeding, and the transaction

between UTA and UPRR that will be the subject of a separate proceeding has been delayed specifically to allow the parties to further discuss the very issues that the Coalition members raise in the Petition. In view of the parties' representations concerning their intent to fully comply with the law and of the ongoing efforts to address the shippers' concerns, the public interest does not favor the Board issuing a stay that is unnecessary and moot.

WHEREFORE, and in view of all of the foregoing, UTA respectfully requests this Board to deny the Petition for Stay in this proceeding.

Respectfully submitted,



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Dated: March 26, 2007

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Certificate of Service

I hereby certify that on this 26th day of March, 2007 caused to be served a copy of the foregoing REPLY OF UTAH TRANSIT AUTHORITY TO PETITION FOR STAY, upon all parties of record in this proceeding by first class mail, with postage prepaid and properly addressed:

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